

**Report of the**

**INDIANA AGRICULTURE  
REGULATORY STRUCTURE  
TASK FORCE**

**Submitted to the Lieutenant Governor,  
January 7, 2009**



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# EXECUTIVE SUMMARY

The Indiana Agriculture Regulatory Structure Task Force was commissioned in 2007 by Lieutenant Governor Becky Skillman to study the governmental structure of the thirteen agencies, organizations and other government related functions that regulate agriculture to determine 1) what structures are working efficiently, effectively and credibly and 2) what structural gaps, overlaps or inadequacies should be fixed.

The Task Force met eighteen times from December 2007 to December 2008. Small workgroups of the Task Force also met on several occasions to accomplish particular tasks. We first heard testimony from representatives of citizens and agricultural stakeholder groups. Following several meetings with representatives of the agencies being reviewed, we deliberated for six months to reach consensus in our findings and recommendations.

The focus of the Task Force was on structural changes which would improve the agriculture regulatory structure over the long term, taking into account not only current challenges and opportunities but those perceived for the future. Our recommendations transcend administrations and provide a foundation for future administrations to build upon.

## Findings

The Task Force found that most of the agencies work well the vast majority of the time. In isolation, the structure of most is adequate. The interrelationship of agencies is also solid, but the disconnectedness between agencies on some issues does create challenges, especially with respect to gaps and overlaps between the regulatory programs of the agencies. In some cases, the dedicated professional staff of agencies is able to compensate for these difficulties by competently managing complex issues fairly and wisely. Nonetheless, even well-intentioned professionals cannot always overcome the challenges which are present.

We found it useful to divide agricultural regulatory actions into three categories:

- 1) regulating for protection of the food-growing industry's vitality (e.g. the health of the animals, the quality of the seed, feed and pesticides or the quality of the eggs),
- 2) regulating the distribution of the food product for safety of the consumer, and
- 3) regulating the agricultural operation itself for impact on the environment or public health.

In general the Task Force found that state agencies that regulate for the protection of the industry itself are the most efficient and effective at their roles. They generally receive highest marks from both the regulated and the citizens. Their officials are trained adequately for their tasks and have a solid understanding of the agriculture operations they are regulating. Their leaders tend to be long-term technically-qualified professionals instead of leaders that change with each administration if not more frequently. These agencies had long-established credible means of interaction with both the regulated and the citizens. They tended to have regulatory policies that remained predictable and consistent over long periods.

The Task Force found that the food safety regulatory structure operated under the historical impediment of shared responsibility between State and local government without adequate funding. The inherent mismatch of capabilities between well-meaning staff among counties with different resources and the State agencies must be addressed.

State agencies that regulate the environment or public health impacts of agriculture tend to be the agencies with the greatest structural challenges and the lower approvals by citizens and the agriculture industry. For instance the governmental environmental regulatory structure of IDEM and DNR is not designed to address effectively that person intentionally adding materials to the land to provide food. The structure assumes the person is intentionally adding pollutants that by their very presence are bad for the surface and ground water.

In addition, conflicting and changing federal and state laws have made it difficult for these agencies to be predictable and consistent and to avoid overlapping and even conflicting responsibilities.

After much deliberation, the Task Force concluded that combining agency regulatory functions would create more inefficiencies than would be reduced. In particular making the Indiana State Department of Agriculture into a regulatory agency (or into a function of authority to coordinate policies of any regulatory agency) would compromise its critical role to be an advocate for the agriculture industry.

### **Principles of Implementing Good Government Structure**

The main principles the Task Force found in successful State agricultural regulatory structures for credibility, efficiency and effectiveness are:

1. Long-term, technically-trained, professional leadership that remains in place across changes in administrations,
2. Agencies with a culture of objective, science-based decisions,
3. Agencies with a culture of understanding the work of those they are regulating and of wanting to interact with the public and all others in a way which is responsive to the audience.

### **Recommendations**

The Task Force has made a series of recommendations, some of which may be implemented in isolation and others which will require implementation in conjunction with other recommendations. Our recommendations are broken into two categories, those which we recommend receive immediate attention in implementation and those which are no less important but do not represent the same sense of urgency in implementation. The primary structural changes the Task Force recommends are:

#### ***1. Regulation of Animal Feeding Operations***

**a. The Confined Feeding Operation (CFO) and Concentrated Animal Feeding Operation (CAFO) programs should continue to be delegated to the Indiana Department of Environmental Management, with the caveat that changes recommended below be made to the operation of the CFO and CAFO programs and the rulemaking structure.**

**i. The General Assembly should create an IDEM Agriculture Advisory Board to inform IDEM on policy, agency operating procedure and education with respect to agricultural regulations.**

**ii. The General Assembly should create within IDEM a position of “Assistant Commissioner of Agricultural Regulation” to coordinate agency regulatory activities of agricultural operations.**

**iii. IDEM should work with the General Assembly and the regulated community to ensure sufficient funding of the CFO and CAFO programs.**

**iv. IDEM should develop a structure for inspection rotations and frequency to improve efficiency and effectiveness of animal feeding regulatory programs.**

**v. The General Assembly should clearly define the roles of the State agencies and local governments with respect to animal feeding operations in order to eliminate duplication and reduce conflicts.**

## ***2. Environmental Rulemaking***

**a. The General Assembly should create an Office of Technical Secretary that is independent of IDEM to provide support for the Water Pollution Control Board, Air Pollution Control Board and Solid Waste Management Board.**

## ***3. Policy Discussion and Conflict Resolution***

**a. The Governor should create the Governor’s Agriculture Regulatory Council of the heads of all Cabinet and non-Cabinet agencies that regulate or promote agriculture to coordinate policy initiatives related to agriculture and to discuss and monitor interagency conflicts.**

**b. The Governor should designate a position within the Office of the Governor to facilitate discussion and resolution of agricultural issues within levels of government, between the government and the regulated community, and between the government and the public.**

**c. The Governor and Lt. Governor should create a written policy which clearly states the role of the Lt. Governor with respect to all agencies that regulate or promote agriculture.**

The additional structural changes the Task Force recommends are:

***1. Indiana State Department of Agriculture (ISDA)***

**a. ISDA should operate solely as a non-regulatory agency which will require implementation of the changes recommended below.**

**i. The General Assembly should move the Grain Buyers and Warehouse Licensing Agency from ISDA to the Department of Financial Institutions or another agency that focuses upon auditing financial records in order for ISDA to focus on non-regulatory programs.**

**ii. The General Assembly should move the Grain Moisture Meter testing program from the GBWLA to the weights and measures program currently at the Indiana State Department of Health to streamline similar functions.**

***2. Indiana Grain Indemnity Corporation (IGIC)***

**a. The General Assembly should require the Grain Buyers and Warehouse Licensing Agency to submit its budget and annual financial statements to the IGIC Board to provide insight into appropriate funding levels.**

***3. Creamery License Division (CLD)***

**a. The General Assembly should sunset the Creamery License Division as a state regulatory agency. The dairy industry, as the provider of resources for the CLD, should provide input into any continued implementation of the responsibility of the Creamery Examining Board.**

***4. Animal Disease Diagnostic Laboratory (ADDL)***

**a. The General Assembly should change the law to have ADDL diagnostic fees be approved by the Board of Animal Health and implemented by the Treasurer of Purdue University to eliminate unnecessary duplication of oversight.**

**b. The General Assembly should give ADDL authority to utilize fees to pay for non-faculty staff to conduct testing to improve efficiency in responding to emergencies and to create opportunity for growth in revenue by providing testing services to out-of-state users.**

### ***5. Department of Natural Resources (DNR)***

**a. DNR and IDEM should enter into a Memorandum of Understanding specifying that the role of DNR conservation officers in spill response is to support IDEM in order to streamline responses and reduce conflict.**

**b. DNR should provide more resources for the apiary inspection program to provide adequate program effectiveness.**

**i. To fulfill this resource need, DNR should consider establishing a program to certify experienced beekeepers to inspect hives on behalf of the State.**

**c. The General Assembly should give the Board of Animal Health sole authority for regulation with respect to animal health of privately-owned cervids to eliminate overlap of agency regulations.**

### ***6. Purdue Oversight of Regulatory Programs***

**a. Purdue should provide annual financial reports for each of its regulatory programs to the Governor and to each respective regulatory rulemaking or advisory board to provide public information about resource allocation and projection of future needs.**

### ***7. General Rulemaking***

**a. The Governor's staff should develop a structure to ensure that board appointments are made in a timely manner to ensure efficient and effective rulemaking.**

**b. The General Assembly should limit the number of voting positions on rulemaking boards to no more than one administration/agency representative. The representatives should serve in ex-officio non-voting capacities. This will provide greater opportunity for engagement by the regulated community and the public in rulemaking.**

**c. The General Assembly should establish a standing Legislative Services Agency committee to assure that the seven-year regular review required by State law of those State regulations not mandated by the federal government is implemented systematically, consistently and rigorously in order to assure rules meet present day conditions and current science.**

**d. The Governor should convene a task force to review rulemaking procedures to resolve deficiencies in process, level of agency control, involvement of stakeholders, and notice.**



## ***8. Weights and Measures***

**a. The Governor should convene a task force to determine the appropriate structure and location of the weights and measures program to ensure consistent, effective and efficient program implementation.**

## ***9. Septic System Regulation***

**a. The General Assembly should transfer authority of residential septic system regulation from ISDH to IDEM in order to eliminate duplication and to make implementation more efficient.**

**b. The General Assembly should require certification of septic system installers and inspectors in order to make efficient use of state and local resources for oversight.**

## ***10. Implementation of Regulations at the Local Level***

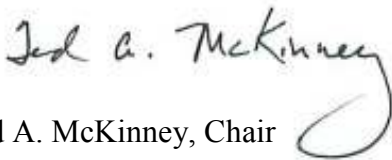
**a. The Governor should convene a task force made up of representatives of local governments and state agencies to review the role of local governments in implementing food inspection, weights and measures, and septic regulatory programs adopted at the state level in order to make most efficient and effective use of state and local resources.**

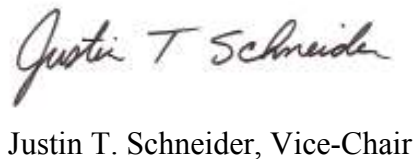
## ***11. Emergency Preparedness and Response***

**a. The Indiana Department of Homeland Security should make clear each agency leader's role in connection with emergency planning, that new agency heads be briefed within their first month in office, and regular dialogue be sustained in order to assure continuity of an integrated state response to emergencies.**

## ***12. Water Management Programs***

**a. The Governor should commission a study of combining water related programs into a "Department of Water Management" to determine the long-term feasibility, efficiency and effectiveness of combining programs or altering program implementation in order to eliminate overlaps, plug gaps, and streamline permitting processes.**

  
Ted A. McKinney, Chair

  
Justin T. Schneider, Vice-Chair

## **I. INTRODUCTION**

This report is respectfully submitted to the State of Indiana via the Lieutenant Governor with gratitude for the opportunity to undertake this endeavor. This report addresses not only current challenges but those arising in the future. Some challenges will likely take years of effort by forward-thinking governmental leaders and stakeholders to improve. The Task Force urges future administrations and General Assemblies to consider this report when organizing and determining how best to manage the agriculture regulatory structure. This document is meant to be a living document—studied, utilized and improved upon in the future by those intent on improving the agriculture regulatory system.

### **A. The Need for Review**

Indiana agriculture is more than the production of corn, soybeans, livestock and poultry. It is responsible for jobs in manufacturing, processing, retail and wholesale trades, forestry and related industries, agribusiness and the service sector. In fact, according to information from the Indiana State Department of Agriculture, over sixteen percent of Indiana's workforce is connected to agriculture, with approximately 575,000 Hoosiers employed on the farm and in the food and forestry industries. Indiana has seen recent growth in agriculture with the expansion of the biofuels industry, livestock and poultry production, and value-added processing. This growth provides tremendous economic opportunities for Indiana farmers, jobs for our non-farm population and revenue to fund government services.

The current agriculture regulatory system is multi-level and multi-purpose, evolving over decades in response to emerging needs. In addition to the regulatory programs in place at the local and federal level, thirteen agencies, organizations and other government related functions exist on the state level as part of the agriculture regulatory system.

Those agencies and regulatory support functions include:

- Board of Animal Health (BOAH)
- Indiana Department of Environmental Management (IDEM)
- Indiana Department of Natural Resources (DNR)
- Indiana State Department of Agriculture (ISDA)
- Indiana State Department of Health (ISDH)
- Creamery License Division and Creamery Examining Board (CLD)
- Office of the Indiana State Chemist (OISC)
- Indiana State Egg Board (ISEB)
- Purdue University: Regulation of Agricultural Seeds and Plant Parts by Certification
- Governor or Governor's designee: Certification of Agricultural Products and Livestock Certification
- Records Required of Deliveries and Purchases of Seed and Grain
- Animal Disease Diagnostic Laboratory (ADDL)
- Indiana Grain Indemnity Corporation (IGIC)

As with any set of organizations, periodic review is needed for continual improvement. There must be a consideration of how and why the structure came into its current form and what long-term needs exist. There must be a consideration of opportunities and challenges inherent in growth and discussion of how to design the system to meet the demand to be efficient, effective, and transparent. Provisions need to be put into place to ensure the governmental capacity to absorb that growth. Having the best possible regulatory system in place must be the goal.

## **B. Who We Are**

At the 2007 Indiana State Fair, Lieutenant Governor Becky Skillman announced the creation of the Indiana Agriculture Regulatory Structure Task Force charged with conducting a review of the structure of State agriculture regulatory agencies. The Lt. Governor appointed Ted McKinney as chair of the bipartisan Task Force and Indiana Farm Bureau, Inc. as facilitator. The twenty Task Force members were selected as individuals from public and private sectors with knowledge of agriculture and experience working with the agencies being reviewed. They represented the regulated community, the public interest community and elected government officials. The members of the Task Force are:

- **Ted McKinney; Dow AgroSciences (Chair)**
- **Justin Schneider; Indiana Farm Bureau, Inc. (Vice-Chair)**
- **Robert Deig; State Senator (Democrat)**
- **William Friend; State Representative (Republican)**
- **Robert Jackman; State Senator (Republican)**
- **Phil Pflum; State Representative (Democrat)**
- **Bob Avenius; TruGreen (Nursery and Landscaping )**
- **Bill Beranek; Indiana Environmental Institute (Government Policy Analysis)**
- **Paul Brennan; Indiana State Poultry Association (Poultry Producers)**
- **John Burger; Dubois County Commissioner (County Government)**
- **Larry Clemens; The Nature Conservancy (Conservation and Natural Resources)**
- **Harold Cooper; Premier Ag (Feed, Seed and Fertilizer Industries)**
- **Jim Cripe; The Andersons (Grain Industry)**
- **John Feutz; Private Veterinarian (Veterinarians)**
- **Todd Janzen; Plews, Shadley, Racher and Braun, LLP (Agricultural Law Section of the Indiana State Bar Association)**
- **Doug Leman; Farmer (Dairy Producers)**
- **Jim Schriver; Farmer (Crop Producers)**
- **Mark Townsend; Farmer (Pork Producers)**
- **John Ulmer; Conservationist (Public, Conservation and Natural Resources)**
- **Julia Wickard; Indiana Beef Cattle Association (Beef Producers)**

### **C. The Task Force Review Process**

Early in the Daniels-Skillman Administration, agriculture regulatory agency heads were assembled to conduct an internal review of the State's agriculture regulatory system. This group, the Agriculture Regulatory Council, was established on October 24, 2005. The Council provided input into the drafting of the Agriculture Regulatory Review Baseline Report, the basis for our review. Using the Baseline Report as the guide, the charge from the Lt. Governor to the Task Force was to determine if Indiana's agriculture regulatory structure could be made more efficient, effective and transparent and had the capacity for growth.

The Task Force met for nearly a year, beginning in December 2007. We first wrote a mission statement to direct our review to meet the present and future needs of agriculture and the Indiana government regulatory system. Our review focused upon the quality and availability of state regulatory services, efficiencies and cost effectiveness of regulatory programs, duplication of regulatory services, communication among state regulators and with the public, and accountability to the public, the agriculture industry, the legislature and the executive branch. We only examined regulations to the extent necessary to determine how they impacted or were impacted by the structure of the regulatory system. We considered the impacts of the behaviors of the regulated community on the regulatory system.

The Task Force received input from invited representatives of the regulated and environmental communities during the months of January and February, 2008. We met with representatives of the agencies under review from March through May, 2008. In those meetings, the Task Force was able to identify issues and potential solutions to address existing challenges. This was possible because of the candor and willingness to improve the agriculture regulatory structure exhibited by agency management who met with the Task Force.

After meeting with representatives of the regulatory agencies, the Task Force spent June through August, 2008, developing and discussing potential changes which could be made to improve the regulatory structure. In September, we held public listening sessions in Peru and Jasper to hear concerns and suggestions from the general public. During September, October and November, the Task Force met more frequently in order to refine the recommendations in this report.

## **D. What We Found**

There are three general categories of Indiana agriculture regulatory structure: 1) those that regulate to enhance the success of the agriculture industry (e.g. protect against animal diseases), 2) those that regulate to protect consumers of food products and 3) those that regulate to protect general public health and the environment from impacts of agricultural production. The Task Force found the most effective structures in place tend to be in those agencies whose mission is to support agriculture; the more deficient structures with respect to agriculture regulation are in those agencies with primary regulatory responsibilities other than agriculture.

The Task Force found the structure of the Board of Animal Health and the Office of the Indiana State Chemist to be the most successful agriculture regulatory model. Both operate with stable technical leadership that extends across administrations. Both the State Veterinarian and the State Chemist guide strong technical staff who have knowledge of agriculture and use scientific judgment as the basis for decisions. Both agencies utilize education and enforcement of regulations to assist the agriculture industry in being successful.

Both agencies have tightly incorporated into their operating structure valued external rulemaking and advisory boards composed of stakeholders and technical experts. Conflicts and agency deficiencies that arise due to changing local, state and national conditions can be addressed in an appropriate timely and deliberative manner because of the close working relationship of the agencies and these individuals with outside perspectives. The Animal Disease Diagnostic Lab, Indiana State Egg Board, Creamery License and Indiana Grain Indemnity Corporation similarly make good use of external boards.

While many agencies are structured in a manner that works well in isolation, we found that the disconnectedness between agencies has created gaps and overlaps in the regulatory structure. This is magnified by the changing nature of agriculture and public expectations. Our primary recommendations for streamlining State government add structural components to address the gaps and overlaps and create a self-correcting mechanism to identify and adjust efficiently to future changing conditions.

We seriously studied combining inspection responsibilities from multiple agencies to gain efficiencies to both government and the regulated community. We determined that the changes would likely exacerbate the existing challenges of effective management for consistency.

The Task Force recognized that there may be benefits to agencies delegating responsibilities to other organizations or agencies better equipped to handle certain regulatory matters. An example would be Purdue University's delegation of the certification of plants and seeds to the Indiana Crop Improvement Association.

The Task Force was specifically asked to investigate Indiana Code 15-15-9 and 15-19-5. IC 15-15-9 addresses the certification of plants, plant parts and byproducts to the specifications of a buyer from a foreign country. IC 15-19-5 addresses the certification of livestock, bovine semen, or embryos to the specification of a buyer in a foreign country. For both statutes, the Governor or the Governor's designee is responsible for certification. We did not discover any agency that has taken responsibility to implement those programs.

Another structural defect we found was the tension created between 1) the necessity of professional regulatory staff implementing regulations in a predictable, consistent and fair manner and 2) the inherent changes which occur with the election of new State government leadership. There is a strong tendency for new political leadership to try to adjust the decision-making of the professional regulatory staff and the internal structure of an agency in a manner consistent with its particular preferences. While it is recognized that the Governor and Lt. Governor should place their own people into positions of authority following changes in administrations, the Task Force notes that wholesale changes can create inherent problems. Concerns include loss of agency experience and knowledge. Sudden changes in direction and organizational structure can have significant and unexpected costs for the regulated community. We have made several recommendations to reduce the negative impacts of such changes.

The philosophy used for making our recommendations was to draw from positive aspects of agencies that were working well to suggest practical ways the structure of others could be improved. In three instances we recommend that other task forces be convened with appropriate composition to study and solve important structural challenges that our Task Force had neither the time nor appropriate representation to address.

Effective communication from agencies to the public and regulated community is an area which drew concern. Improvements to structure for agency regulatory activities are necessarily integrated with improvements to structure for communication about those activities. While we make several recommendations on how agencies should improve structure for communication, we note that access to high-speed internet, which is lacking in some parts of the State, has become critical for interacting with agencies. Because high-speed access is lacking, agencies need to continue to utilize non-internet means of communication.

We have listed our recommendations, starting with those of greatest importance to building sound government in Indiana in the years ahead. We recognize and encourage others to discuss them and improve upon them because it will take all parties working together to make a better Indiana.

## II. GENERAL PRINCIPLES OF EFFECTIVE AGENCIES

The Task Force found agencies or parts of agencies which worked well in achieving efficiency, good communication, high morale and credibility to external stakeholders. We note equally important key aspects of these successful entities and encourage other agencies involved in agriculture to emulate them.

1. Agencies are most effective when professional staff and agency leadership ***understand and respect the agricultural industry and rural communities*** in which they operate, as well as the challenges facing the agricultural community in the activities being regulated.
2. Agencies are most successful in achieving their objectives when the regulatory focus is on ***training and compliance assistance*** as opposed to enforcement actions, fines and prosecution.
3. Agencies whose decisions are ***science-based*** have the most credibility with the regulated community and citizens.
4. Agencies led by officials appointed for their ***technical experience and expertise who transcend multiple administrations*** historically have been more consistent and effective in their administration of regulatory programs and more credible to all stakeholders.
5. Advisory and rulemaking boards comprised of ***stakeholders and external technical experts whose service transcends multiple administrations*** provide valuable guidance and consistency to agencies.
6. Rulemaking boards are most effective when ***members' technical knowledge*** supports their board activities.
7. The most successful agencies have effective ***direct communication from top officials to each level of employees*** about expectations, policy interpretations and priorities rather than extensive use of chain-of-command communication.
8. Agencies are most effective in implementing programs when ***personnel discuss issues with those outside*** of their immediate area of responsibility to consider impacts on other program areas.
9. Agencies are most effective when they have experienced professional staff who are ***given clear policy direction and are delegated authority*** to implement and manage programs.
10. Agencies are most successful when they have career advancement opportunities that ***reward experience and expertise*** rather than reward by promotion into management positions.
11. Agencies have a better chance of success when ***effective structures are in place to resolve interagency conflict***. Authority to resolve conflict between agencies should not be delegated to a member of any agency.
12. Agencies receive better cooperation and higher trust from the regulated community and public when they are ***consistent in the treatment of similarly situated businesses***.
13. Agency legislative proposals which involve new or different public policy determinations are most clear and comprehensive when they have been ***vetted by the public before legislative study committees***.

### III. RECOMMENDATIONS

#### A. Critical Recommendations for Priority Implementation

##### *1. Regulation of Animal Feeding Operations*

**a. The Confined Feeding Operation (CFO) and Concentrated Animal Feeding Operation (CAFO) programs should continue to be delegated to the Indiana Department of Environmental Management, with the caveat that changes recommended below be made to the operation of the CFO and CAFO programs and the rulemaking structure.**

No issue with respect to the agencies which regulate agriculture is more prominent or contentious than animal feeding operation regulation. The Task Force invested significant time and effort in determining how best to administer the animal feeding operation programs. Currently the CFO and CAFO programs, which focus on protection of waters, are housed in IDEM.

The Task Force considered whether another agency such as the Board of Animal Health (BOAH), Office of the Indiana State Chemist (OISC) or the Indiana State Department of Agriculture (ISDA) would provide resources and a culture that IDEM does not have in implementing the CFO and CAFO programs. We determined that since IDEM is the agency with ultimate authority for water quality programs under the federal Clean Water Act and state level programs, movement of the programs would add additional layers and cost to government. Movement has the potential to create conflict between agencies with responsibility for protection of water quality and may not result in a more efficient regulatory structure.

**i. The General Assembly should create an IDEM Agriculture Advisory Board to inform IDEM on policy, agency operating procedure and education with respect to agricultural regulations.**

An IDEM Agriculture Advisory Board will improve the efficiency, effectiveness and transparency of IDEM regulatory programs. IDEM's primary thrust is to regulate facilities which emit, discharge or dispose of waste products. In contrast, agriculture intentionally and necessarily places materials into the environment to harness the soil's productivity.

The Task Force recognized that politically-balanced advisory boards made up of knowledgeable stakeholders and technical experts provide consistency and guidance across administrations for ensuring proper implementation and direction of programs. They also serve a valuable role in educating employees of agencies about issues impacting the industry and can assist in developing educational programs.

The IDEM Agriculture Advisory Board should advise the agency on policy and program implementation. The Board should specifically provide input on:

- Rule proposals and amendments;
- Education programs for the regulated community and IDEM employees;
- Appropriate fee levels;
- Creation of non-rule policy; and



- Development of inspection processes and checklists.

This Board should be made up of individuals representing a broad cross section of the public, technical experts, representatives of those livestock and poultry species regulated under the CFO and CAFO programs and individuals from other agriculture related areas regulated by IDEM. Individuals who are chosen should have experience or technical expertise which will aid in fulfilling the responsibilities of the Board.

**ii. The General Assembly should create within IDEM a position of “Assistant Commissioner of Agricultural Regulation” to coordinate agency regulatory activities of agricultural operations.**

IDEM administers many programs which either directly or indirectly regulate agriculture. Of those programs, regulation of animal feeding operations falls into the most visible programs IDEM implements and is often the source of controversy with members of the public. The need for the Assistant Commissioner of Agricultural Regulation is driven in large part by the current structure of IDEM with respect to animal feeding regulation. Those programs make up a small portion of the IDEM regulatory portfolio. They are generally not seen as a main priority of agency management because most public interaction is with agency staff involved in program implementation. The Assistant Commissioner of Agricultural Regulation would coordinate public interaction and be the voice of IDEM with respect to issues related to animal feeding operations.

The Assistant Commissioner of Agricultural Regulation should coordinate all activities related to IDEM programs which impact agriculture. This individual should have responsibility to ensure appropriate and consistent interpretation of rules. The Assistant Commissioner of Agricultural Regulation should serve as the staff to the IDEM Agriculture Advisory Board. This individual should be involved in the rulemaking process and oversee rulemaking for IDEM with respect to animal feeding operations. The Assistant Commissioner of Agriculture Regulation should be responsible for training of employees, the regulated community and the public on agriculture and the regulatory programs within IDEM. Furthermore, this individual should work with other IDEM staff and the IDEM Agriculture Advisory Board to develop inspection protocols. This person might also be assigned a staff of inspectors dedicated for animal feeding operations to ensure consistent implementation of rules.

The Assistant Commissioner of Agriculture Regulation would directly report to the Commissioner. We envision that the person in this position would not necessarily be replaced during changes in administration so that consistency in regulatory programs could be provided.

Presently, the individual who has responsibility for working with the agricultural community is the Agricultural Liaison. While the presence of the Agricultural Liaison has been beneficial because of the ability to provide confidential guidance through the Office of Pollution Prevention and Technical Assistance (OPPTA), the needs of IDEM, the public and the agricultural community have surpassed the ability of the Agricultural Liaison position. The efficient and consistent operation of the CFO and CAFO programs requires that someone serve not only as a liaison, but be given the authority and directive to focus upon and coordinate agricultural regulatory programs. The Task Force recommends that the position of Assistant Commissioner

of Agricultural Regulation replace the position of Agricultural Liaison. OPPTA would retain responsibilities which relate to confidential discussions related to advice on how to address environmental issues that fall short of imminent discharges.

**iii. IDEM should work with the General Assembly and the regulated community to ensure sufficient funding of the CFO and CAFO programs.**

An ongoing concern is that sufficient funding be provided for the CFO and CAFO programs to adequately service the needs of the regulated community and to maintain the public's trust. Consistent and quality services which will impart confidence to the public and minimize public concern are crucial to the future viability of livestock and poultry production.

There exists and must continue to be shared financial responsibility between the public and the regulated community for maintaining program competency and effectiveness. Improved efficiency in program implementation must be achieved before additional funding from any source is sought. Once efficiencies are achieved, funding should primarily be provided through state resources. However, fees for construction approvals and permit renewals may be utilized where appropriate.

The Task Force strongly endorses the concept that where fee increases are necessary and appropriate, they must continue to be set by the General Assembly. In the future, the review of fee levels and suggestions for changes would be an appropriate task for the IDEM Agriculture Advisory Board to consider with input from the regulated community.

**iv. IDEM should develop a structure for inspection rotations and frequency to improve efficiency and effectiveness of animal feeding regulatory programs.**

The Task Force determined that neither the public nor the regulated community is confident that IDEM utilizes a fair, logical and appropriate protocol for assignment of inspections. Confidence in IDEM inspections from all stakeholders is critical. With the increase in the number of animal feeding operations, the inspection process must provide for environmental integrity, protect rural community quality of life and maintain agricultural industry vitality.

IDEM should establish with stakeholder input the protocols for selection of facilities to inspect and make them available for the public. Inspection protocols should maximize inspector efficiency, ensure fairness to facilities with similar conditions and provide greater frequency to those with an objectively demonstrated need for additional oversight.

**v. The General Assembly should clearly define the roles of the State agencies and local governments with respect to animal feeding operations in order to eliminate duplication and reduce conflicts.**

It is inefficient and ineffective for more than one agency of state and/or local government to regulate an activity for the same purpose. It is also inefficient and costly for the regulated community to attempt to comply with conflicting regulations or different interpretations of the same regulation.

There has been an increase in animal feeding operations in Indiana, and the existing regulatory structure is being tested. To avoid governmental agencies implementing similar or identical regulations for the same technical issue, we recommend that the appropriate statutes be changed to clarify the respective roles. The concerns of all stakeholders should be addressed but duplication of governmental authority should be eliminated.

When local governments are asked to implement delegated authority, appropriate State funding should be provided. The Task Force supports the principle acknowledged by the Indiana Commission on Local Government Reform that when there is a shared responsibility between state and local government for services, the administration of state services should be supported by state funding when possible.

Here are points that reflect our understanding of appropriate roles and responsibilities of state and local government agencies for regulation of animal feeding operations:

- IDEM regulates surface water, ground water, and air quality through its permits and approvals. IDEM should continue to be the regulatory entity in Indiana to implement environmental regulations for animal feeding operations.
- The Office of the Indiana State Chemist has responsibility for the application of fertilizer material (including manure) on agricultural land. IDEM has responsibility for the impacts from run-off of manure into surface waters. It is imperative that both agencies cooperate closely in developing and implementing regulations for these shared responsibilities.
- The Indiana State Department of Health has responsibility for protection of human health. Local health departments have responsibility to implement State health regulations. To avoid a cumbersome, confusing patchwork of local health regulations with respect to animal feeding operations, the ISDH should be the lead agency establishing statewide policy to evaluate and address human health concerns with respect to animal feeding operations. The recommendations of ISDH, if any, should be implemented as part of IDEM regulations. More specifically, with respect to animal feeding operations, local health departments should have regulatory authority only to implement explicit State human health regulations.
- Authority for local health departments to implement State agency programs should be contingent on certification by the corresponding State agency because of the high level of technical expertise required to formulate responses to new technical issues.
- Local political subdivisions have responsibility for land use and zoning under conditions of State law.
- The Board of Animal Health has responsibility for control and eradication of animal diseases. BOAH should be supported by ISDH in the event that animal disease may impact human health.
- The Indiana Occupational Safety and Health Administration has responsibility for the protection of worker safety and health.

## ***2. Environmental Rulemaking***

### **a. The General Assembly should create an Office of Technical Secretary that is independent of IDEM to provide support for the Water Pollution Control Board, Air Pollution Control Board and Solid Waste Management Board.**

Currently, the three environmental rulemaking boards are required by statute to have a technical secretary whose sole duty is to meet with the board at periodic meetings (approximately six per year) to assist them in their responsibilities for rulemaking. Because of the lack of adequate, ongoing independent technical support, IDEM controls the rulemaking process in lieu of the independent board process envisioned by statute.

The boards need to be more actively engaged in fulfilling their statutory responsibility for rulemaking. To allow this, IDEM should not operate as staff for the board but as an important stakeholder seeking to get a rule passed by the board. The board staff position would be filled by a full-time Technical Secretary who has the responsibility to oversee the rulemaking process for the board chair who is appointed by the Governor. IDEM or other constituencies would continue to draft their own proposed rules, but the Technical Secretary would ensure that appropriate rulemaking procedures are followed. The Technical Secretary shall provide technical information to board members as needed. The Technical Secretary should have technical expertise but need not necessarily have expertise in all three regulatory areas (water, air and solid waste).

## ***3. Policy Discussion and Conflict Resolution***

### **a. The Governor should create the Governor's Agriculture Regulatory Council of the heads of all Cabinet and non-Cabinet agencies that regulate or promote agriculture to coordinate policy initiatives related to agriculture and to discuss and monitor interagency conflicts.**

The Task Force determined that the Council of heads of all agriculture regulatory agencies used effectively in 2006 by the Lt. Governor should be made a permanent standing body reporting directly to the Governor or the Governor's designee (e.g. Lt. Governor). This is a forum for direct communication among the leaders of the agencies themselves so all have an understanding of current and imminent regulatory issues facing Indiana agriculture. Absence of effective communication among leaders of agriculture agencies is the source of interagency conflict, confusion to the regulated community and public, and ongoing inefficiencies in government. The Council would be the place where heads of agencies themselves can design solutions to resolve gaps and overlaps in regulations.

A structure similar to the Council is currently in place with the Governor's Cabinet. The Council would include Cabinet and non-Cabinet level agency heads, providing a structure for communication which does not currently exist for those two groups. The Council could serve in the role for agriculture issues as the Cabinet does for broader government purposes.

We envision that this body would meet as needed, but at least on a semi-annual basis to discuss policy-related issues and concerns between the agencies. The Governor or the Governor's designee should be the chair and organizer for the meetings. The Task Force strongly recommends that this responsibility not be delegated to agency management or

personnel because of the potential for agency management to give lower priority over time to initiatives outside of the direct chain of command. The Task Force has identified several organizational and policy related tasks for the Governor's Agriculture Regulatory Council:

- Set and regularly review Council priorities for attention;
- Develop a structure for agencies to inform other agencies of proposed rulemakings and to provide comments on those proposals;
- Develop a structure to assure that each applicable agency has written inspection protocols, including checklists of areas to be reviewed during an inspection which will be made available to the regulated community, and that an effective mechanism exists for oversight to ensure consistency of inspections;
- Develop a structure to monitor the development, public dissemination and utilization of enforcement matrices;
- Establish a standing multi-agency committee to maintain data on regulatory fees to continually track the aggregate financial impact on agricultural operations along with the benefits those fees create;
- Establish a structure to promote implementation of general principles of effective agencies;
- Develop standardized multi-agency permit applications which contain information all agencies need to approve a particular activity, such as the regulation of stream bank construction activities by both DNR and IDEM;
- Develop a structure for review of statutes and regulations with respect to agriculture to determine where regulations overlap, policies between agencies are inconsistent, or statutory authorities do not align with current needs;
- Develop a process for a third-party audit of each agriculture regulatory agency's educational programs and make recommendations for improvement;
- Maintain a database of charts showing the different functions and responsibilities of the agencies that regulate agriculture to ensure effective communication of agency responsibilities with the public and regulated community about who in each agency has responsibility for specific regulatory functions affecting agricultural activities;
- Establish a structure for oversight of training for agriculture regulatory agency employees who receive public inquiries to ensure knowledge of programs within that agency and other agencies with similar responsibilities; and
- Coordinate agency activities in determining how to most effectively convey information on agriculture regulatory programs to the public and regulated community by both electronic and non-electronic means to ensure effective communication with diverse user groups.

**b. The Governor should designate a position within the Office of the Governor to facilitate discussion and resolution of agricultural issues within levels of government, between the government and the regulated community, and between the government and the public.**

The 2006 Agriculture Regulatory Council convened by Lt. Governor Skillman proposed that an Agriculture Regulatory Ombudsman should be appointed to facilitate better cooperation and coordination of agencies with regulatory functions and between

state government and the public. The Task Force determined that not only is this position critical but the location of the person in the Governor's office is important. Delegation of this responsibility to staff within an agency is likely to be subject to public distrust if the agency is charged with promoting agriculture or disregarded if the agency is perceived to be ineffective in its regulatory programs. An aide to the Governor with other responsibilities, such as a policy advisor with responsibility for numerous agencies, would not have time to be effective in this role.

**c. The Governor and Lt. Governor should create a written policy which clearly states the role of the Lt. Governor with respect to all agencies that regulate or promote agriculture.**

In 2005, the Lt. Governor was statutorily appointed the Secretary of Agriculture and Rural Development by the General Assembly. Having the Lt. Governor serve in this position demonstrates the high value that the State places upon agriculture. However, there has been confusion about the role of the Secretary of Agriculture and Rural Development with respect to the oversight of agencies under the direct authority of the Governor that regulate or promote agriculture. This policy should set proper expectations for the public and agencies.

**B. Important Recommendations for Implementation Over Time**

***1. Indiana State Department of Agriculture (ISDA)***

**a. ISDA should operate solely as a non-regulatory agency which will require implementation of the changes recommended below.**

The Task Force debated extensively about whether an agency can function in both regulatory and promotional capacities and reviewed experience from other states. While an agency can maintain both functions, there is concern that the trust which is critical between government and its citizens might be lost if an agency is actively promoting an industry and regulating that same industry. Other than the administration of the Grain Buyers and Warehouse Licensing Agency (GBWLA), the focus of ISDA has been on promotion of agriculture through economic development, promotion programs, educational endeavors and assistance to other agencies and units of government in the development of sound agricultural policy.

**i. The General Assembly should move the Grain Buyers and Warehouse Licensing Agency from ISDA to the Department of Financial Institutions or another agency that focuses upon auditing financial records in order for ISDA to focus on non-regulatory programs.**

The GBWLA is an independent agency inside ISDA that is responsible for financial audits of grain buyers and warehouses to ensure that they are in a satisfactory financial position to secure payment for the grain which is being stored or sold there. Because we are recommending that ISDA focus on non-regulatory programs, GBWLA oversight should be moved to another agency with experience and understanding of accounting and financial audits. The Task Force recommends that the Department of Financial Institutions be considered as the agency to assume

responsibility for the GBWLA program. We recommend that the staff and budget for the GBWLA be transferred from ISDA to the appropriate agency.

**ii. The General Assembly should move the Grain Moisture Meter testing program from the GBWLA to the weights and measures program currently at the Indiana State Department of Health to streamline similar functions.**

The GBWLA is also responsible for moisture meter testing at grain elevators. This is a weights and measures function and is more appropriately aligned with that program. Moving the program should not require any additional burden on weights and measures inspectors since they already inspect the scales at grain purchasing and warehousing facilities.

***2. Indiana Grain Indemnity Corporation (IGIC)***

**a. The General Assembly should require the Grain Buyers and Warehouse Licensing Agency to submit its budget and annual financial statements to the IGIC Board to provide insight into appropriate funding levels.**

The IGIC Board oversees the management and distribution of the Indiana Grain Indemnity Fund, a grain producer funded program which pays producers in the event of a failure of a grain buyer or warehouse. IGIC does not maintain its own staff, but it works closely with the Director of the Grain Buyers and Warehouse Licensing Agency, who acts as chairperson of the IGIC Board. The relationship between IGIC and GBWLA is crucial to the protection of grain producers. If the GBWLA were to not fully implement its regulatory duties, the risk of failures by grain buyers and warehouses would likely increase. Failure on the part of the GBWLA to fulfill its statutory duties would put the Fund at risk. Given that IGIC insures not only against failures, but in effect insures the work of the GBWLA, the IGIC Board should maintain oversight and serve in an advisory role in the budgeting and operation of the GBWLA.

The Task Force heard concerns that the IGIC Fund balance needs to be increased to a higher level to protect against large failures in the grain purchasing and warehousing industry. Given changes to the commodity markets and the entrance of numerous biofuel facilities as purchasers of grain, there is concern that the Fund is more at risk from large failures than when it was created. Assurance that the Fund is at a sufficient level of funding should large failures occur is crucial.

***3. Creamery License Division (CLD)***

**a. The General Assembly should sunset the Creamery License Division as a state regulatory agency. The dairy industry, as the provider of resources for the CLD, should provide input into any continued implementation of the responsibility of the Creamery Examining Board.**

The Task Force received numerous assertions that the CLD is a government agency that is no longer needed. The Task Force does not believe that the CLD should continue to operate as a state government agency. The CLD is an agency whose purpose is to ensure fairness and accuracy in weighing, sampling and testing of milk and cream. Much

of the review focuses on the samples taken by milk haulers to determine whether they are accurate. In essence, it is an agency which offers some services similar to those offered by other agencies or more appropriate for the private sector.

#### ***4. Animal Disease Diagnostic Laboratory (ADDL)***

**a. The General Assembly should change the law to have ADDL diagnostic fees be approved by the Board of Animal Health and implemented by the Treasurer of Purdue University to eliminate unnecessary duplication of oversight.**

Currently, fee increases are approved by both the Purdue University Board of Trustees and BOAH. This is not an issue which rises to the level of oversight by the Board of Trustees. Approval by BOAH should provide appropriate oversight for the fee structure because it is made up of representatives of the industries upon which ADDL charges fees for the tests.

**b. The General Assembly should give ADDL authority to utilize fees to pay for non-faculty staff to conduct testing to improve efficiency in responding to emergencies and to create opportunity for growth in revenue by providing testing services to out-of-state users.**

ADDL's authority to charge fees for testing is limited by statute to supplies and equipment for the laboratory. The original intent was for those fees to also be available to pay staff to perform the tests. Given the limited staff resources and the costs of performing tests, ADDL has been restricted in being able to offer testing services. This restriction has limited the ability of ADDL to respond to emergencies and to open new revenue streams by providing specialized testing services.

#### ***5. Department of Natural Resources (DNR)***

**a. DNR and IDEM should enter into a Memorandum of Understanding specifying that the role of DNR conservation officers in spill response is to support IDEM in order to streamline responses and reduce conflict.**

The role of conservation officers in response to discharges into waters of the State and the subsequent investigations has a big impact upon agriculture. Conservation officers often respond to calls regarding spills, focusing on law enforcement issues rather than spill containment, cleanup and source identification, which is the focus of IDEM. The difference in focus of these two agencies has the potential to create conflict between the agencies in completing their responsibilities.

It is necessary that both agencies speak with a consistent voice in providing public information about discharges and impacts upon natural resources. Because IDEM is the agency with staff with technical capabilities to determine the causes of discharges and responsibility to contain them, IDEM should maintain primacy and DNR should provide support to IDEM.



**b. DNR should provide more resources for the apiary inspection program to provide adequate program effectiveness.**

With the loss of honey bees comes the potential for loss of agricultural production through reduced pollination. While there has been an increase in loss of bee colonies, the trend of fewer resources for the apiary program at DNR has continued, to the point where State inspections seldom occur. Currently, only one staff member is assigned to part-time apiary duty.

**i. To fulfill this resource need, DNR should consider establishing a program to certify experienced beekeepers to inspect hives on behalf of the State.**

In lieu of DNR providing more direct financial and staff resources to administer the apiary program, an option is for DNR to establish a program whereby beekeepers could be certified to perform inspections on behalf of the State. This program may give a feasible alternative to DNR itself providing more resources to the apiary program.

**c. The General Assembly should give the Board of Animal Health sole authority for regulation with respect to animal health of privately-owned cervids to eliminate overlap of agency regulations.**

BOAH is the State agency with primary responsibility for animal health concerns and currently regulates the shipment of live cervids for animal health issues as well as the raising of captive privately-owned cervids. DNR currently has authority over the raising of cervids through its authority to issue breeder's licenses. Regulation of cervids at times is related to animal health concerns, which is a matter better left to BOAH.

***6. Purdue Oversight of Regulatory Programs***

**a. Purdue should provide annual financial reports for each of its regulatory programs to the Governor and to each respective regulatory rulemaking or advisory board to provide public information about resource allocation and projection of future needs.**

Regulatory programs housed at Purdue are different from other state regulatory programs in that they are primarily funded by fees charged to the regulated community and are administered outside of the normal procedures for State regulatory agencies. Fee levels are set by the General Assembly at the request of Purdue (a practice the Task Force strongly recommends be sustained) with the intent that such fee levels be maintained for approximately ten years, if at all possible. An annual report will, over time, ensure regular communication to the Governor and to respective boards about resource allocation and could project future needs.

## **7. General Rulemaking**

**a. The Governor's staff should develop a structure to ensure that board appointments are made in a timely manner to ensure efficient and effective rulemaking.**

In many administrations there has been significant delay in gubernatorial appointments to boards. In order for boards to function properly, they need to have a full complement of members representing stakeholders. The service of board members should be recognized and terms limits respected with timely replacement of members who are leaving board service.

**b. The General Assembly should limit the number of voting positions on rulemaking boards to no more than one administration/agency representative. The representatives should serve in ex-officio non-voting capacities. This will provide greater opportunity for engagement by the regulated community and the public in rulemaking.**

Often, statutes assign several agencies voting seats on rulemaking boards of other agencies. This allows those agencies to provide their input, concerns and suggestions about a policy recommendation in a public setting. However, given the number of seats for representatives of the agencies compared to the total makeup of the boards, the Administration holds inordinate power in passing rules. The public and the regulated community would be more responsive to the formal rulemaking process if their representatives had more input into the outcome of a rule proposal.

**c. The General Assembly should establish a standing Legislative Services Agency committee to assure that the seven-year regular review required by State law of those State regulations not mandated by the federal government is implemented systematically, consistently and rigorously in order to assure rules meet present day conditions and current science.**

With changing economic conditions, new technologies and evolving laws, existing regulations may pose requirements that become inefficient or that give results that could be achieved in a more cost-effective manner. On the other hand, with changing government priorities and attentions, some regulations were never or are no longer being implemented. Periodic checks either to eliminate such ineffective rules or to fix structures to implement them is warranted. A structure has been put into place by the General Assembly to implement these checks and should be utilized by the Governor to improve the regulatory environment.

**d. The Governor should convene a task force to review rulemaking procedures to resolve deficiencies in process, level of agency control, involvement of stakeholders, and notice.**

Rulemaking varies among agencies, and the ability of the public to participate in the rulemaking process is different with each agency. The Task Force determined that the legal structure of Indiana rulemakings could benefit by review and revision, but we had neither the time nor complete representation to engage in that study. We do believe that agencies could improve upon their utilization of the existing structure through the

adoption and use of standard procedures which ensure the process is open, informative and timely. We recommend the rulemaking task force's review focus upon finding areas where rulemaking procedure is used well by Indiana agencies and agencies in other states so that the process can be emulated by all agencies. We urge the task force to specifically address these issues, among others:

- Increase effectiveness of agency utilization of work groups made up of representatives of affected stakeholders;
- Increase ability of stakeholders to be seriously engaged in the rulemaking process;
- Improve moderator guidance of discussions which provides serious consideration of all legitimate concerns;
- Improve effective public notice for rulemaking among all agencies and explore requirements for notice given before preliminary adoption of a rule by the rulemaking boards;
- Implement realistic requirements for economic impact analysis of proposed rules;
- Encourage development of non-rule policy documents with stakeholder engagement; and
- Review Legislative Services Agency procedures for release of the Indiana Register with the objective of improving public awareness.

## ***8. Weights and Measures***

**a. The Governor should convene a task force to determine the appropriate structure and location of the weights and measures program to ensure consistent, effective and efficient program implementation.**

ISDH is responsible for a weights and measures program which extends far outside the scope of health concerns. A challenge for the weights and measures program is the split of authority for implementation between ISDH and local units of government. An additional issue is whether the weights and measures program is the appropriate authority to implement standards for biofuel quality and blending.

Because the weights and measures program impacts numerous sectors in addition to agriculture, the Task Force suggests a separate review be conducted by individuals representing that broader array of industries and stakeholders, including agriculture. Therefore, the Task Force recommends that the following issues be considered:

- Whether the weights and measures program should remain at ISDH or be moved to a different state agency or to a university;
- Whether the responsibility for administering the program should continue to be split between state and local governments;
- Whether private companies could be licensed to certify scales and meters and/or other weights and measures services; as well as the level of state regulatory oversight needed; and
- Whether the weights and measures program should be responsible for implementing standards related to biofuel quality and blending.

## ***9. Septic System Regulation***

**a. The General Assembly should transfer authority of residential septic system regulation from ISDH to IDEM in order to eliminate duplication and to make implementation more efficient.**

Regulation of residential septic systems drew repeated concern from a wide variety of government and non-government stakeholders because of the significant potential impact on water quality and other issues related to human health. Evidence exists that failing septic systems have a significant impact on the environment, but their contribution to pollution is often overlooked. ISDH is only responsible for rules with respect to installation of residential septic systems. IDEM regulates the installation and operation of commercial septic systems and municipal sewer systems. IDEM also regulates the waters accepting the discharge of failing septic systems, thus IDEM is responsible for septic system failures without direct authority over residential systems. There are structural disadvantages to having sewage materials regulated by two different agencies.

Resources for the septic system program at ISDH should be transferred to IDEM.

**b. The General Assembly should require certification of septic system installers and inspectors in order to make efficient use of state and local resources for oversight.**

In order to facilitate proper placement of septic systems, certification of installers and inspectors should be done by the State.

## ***10. Implementation of Regulations at the Local Level***

**a. The Governor should convene a task force made up of representatives of local governments and state agencies to review the role of local governments in implementing food inspection, weights and measures, and septic regulatory programs adopted at the state level in order to make most efficient and effective use of state and local resources.**

Local units of government are given the responsibility to implement numerous State programs. In some instances, local units have done a superb job of implementing programs. Failure of some local units of government in implementing programs has led to improper regulation. Difficulties may lie in several areas, including lack of funding, technical resources, qualified staff, or political will to implement the programs. Areas for special consideration include food inspections, weights and measures, and septic system regulation.

### **Food Inspections**

Food safety is of paramount concern to consumers and producers. A critical area for public health protection is in food preparation and public distribution such as grocery stores and restaurants. Input from several stakeholders indicated that food regulations may not be consistently enforced. Further, we heard that regulations are enforced differently when ISDH implements them on State property, compared to when local government units implement them. Additionally, ISDH lacks a system to

track whether food inspections are completed or what is being found at the local level.

### **Weights and Measures**

The role of local government units in implementation of the State weights and measures program needs study. When scales and meters are not inspected in a timely manner whether because of lack of resources or proper training, consumers may be exposed to inadvertent or intentional fraud. As with food inspections, the ISDH has little authority to ensure that local units are completing their duties.

### **Septic System Regulations**

Currently, local health departments enforce residential septic regulations promulgated by ISDH. As stated above, the Task Force recommends moving state authority for the residential septic program to IDEM, but this does not change the need for effective state-local cooperation. Improvements need to be made in technical training, resources, oversight and support from the State to ensure consistent enforcement across the state by local units. This is because of the inherent conflict between politics and local geography. For example, there are many areas in Indiana with geology unsuitable for traditional septic systems and yet with local pressure for land use development.

### **Points for Review**

The Task Force recommends that a task force charged with review of local implementation of state programs consider:

- Whether local government responsibility for implementing these programs should continue;
  - If so, whether the State should provide more base level funding to ensure implementation of programs;
  - What level of technical support should be provided by the State;
  - What is the appropriate level of oversight the State should maintain over local units for program implementation;
- Whether programs could be better implemented by combining resources and implementing on a regional level;
- If the State were to assume control of the programs, whether they would still be implemented on the local or regional level;
- Whether a database system could be developed to make inspection and reporting uniform throughout the state;
- Whether information with respect to food inspections and weights and measures certification could be maintained in an online database for consumer review; and
- What level of expertise is needed for individuals implementing programs?

## ***11. Emergency Preparedness and Response***

**a. The Indiana Department of Homeland Security should make clear each agency leader's role in connection with emergency planning, that new agency heads be briefed within their first month in office, and regular dialogue be sustained in order to assure continuity of an integrated state response to emergencies.**

The State has responded in a commendable manner to recent natural disasters and emergency situations. This is due in large part to planning and repeated training. However, the potential exists that newly appointed agency officials unfamiliar with their roles and those of other agencies may find themselves unable to adequately respond to emergencies, particularly with potential disasters of significant magnitude. Training programs for new management will ensure that they have basic information to assist in implementing an emergency response plan.

## ***12. Water Management Programs***

**a. The Governor should commission a study of combining water related programs into a “Department of Water Management” to determine the long-term feasibility, efficiency and effectiveness of combining programs or altering program implementation in order to eliminate overlaps, plug gaps, and streamline permitting processes.**

Those programs which should be reviewed include, but are not limited to:

- DNR
  - Regulation of dams and levees
  - Ground water/wells
  - Lake Michigan programs such as coastal management and lake level
  - Lake preservation and ten acre lakes
  - Flood control act
  - Navigable waterways act
  - Sand and gravel permits
  - Construction of channels act
  - Surface water-hydrology, navigable waters
  - Conservancy districts
- IDEM
  - NPDES, CFO
  - Drinking water
  - Storm water (Rule 5, Rule 6, Rule 13, CSOs)
  - Wetlands
  - Section 401 water quality certifications
  - TMDLs
- ISDH
  - Residential septic systems
- ISDA
  - Division of Soil Conservation
- OISC
  - Fertilizer and Pesticide storage and containment
- Port Commission
- Soil and Water Conservation Districts
- Drainage Boards
- County Surveyors

Numerous challenges exist in the implementation of and compliance with programs related to water. Many agencies at the local, state and federal level are involved in

implementation of regulatory programs which occasionally have conflicting purposes. Voluntary water quality improvement programs are often not coordinated between agencies, resulting in inefficient use of program dollars. Resource gaps in implementation of the storm water rule 5 are directly related to inadequacy of multiple water agency responsibility.

We have already recommended several immediate changes to facilitate more efficient, effective and transparent management of the water regulatory programs. The Task Force believes that the previously recommended changes, if implemented, will resolve many of the key challenges the agricultural industry faces in complying with regulatory programs. By and large, those recommendations are specific to addressing challenges internal to an agency or provide a roadmap to addressing challenges between agencies. This recommendation is a request for a future study which will consider the improvements realized by implementation of other recommendations of the Task Force and their effect on the necessity for moving some water regulatory functions to a new agency. This study should consider the proper role of local units of government with respect to drainage and determine how to properly coordinate activities at the state and local level.

#### **IV. SUMMARY**

After a year's study, the Task Force found much working well about the structure of Indiana State government regulation of agriculture. It also identified a number of opportunities for structural improvement. The Task Force believes that if these recommendations are implemented, they will greatly improve the efficiency, effectiveness and transparency of state government and provide the capacity to absorb the likely growth of the agriculture sector.

Some recommendations address specific challenges within particular agencies, such as the creation of the Agriculture Advisory Board and the position of Assistant Commissioner of Agricultural Regulation at IDEM to improve information flow to address livestock regulatory issues. Another example is that in recognizing that there are potential conflicts in both promoting and regulating the same industry, the Task Force recommends that ISDA serve in a non-regulatory role to promote agriculture.

Some recommendations strive to achieve greater cooperation and coordination among the agencies such as encouraging the active engagement of a Governor's Agriculture Regulatory Council. Some recommendations are made to streamline permitting activities between agencies when multiple agencies regulate the same activity for different purposes, such as IDEM and DNR regulating stream bank construction.

Several recommendations are for the creation of new task forces and studies to address important issues which required additional time and specific technical expertise to complete. Those issues include the structure and interaction of local and state government agencies in regulating agriculture and the structure of agencies regulating the same water activities.

The Task Force believes a vibrant agriculture sector is critical to a robust future Indiana economy. We believe attention to appropriate structure of state and local government is important to that success under rapidly changing global and national conditions.

## Glossary

**ADDL** - Animal Disease Diagnostic Laboratory - The ADDL, which is housed at Purdue University, exists to aid Indiana residents in the diagnosis of diseases of animals and through testing assists BOAH in the prevention, control and eradication of animal diseases.

**AFO** - Animal Feeding Operation - A lot or facility where animals are stabled, confined and fed, or maintained for a total of 45 days or more in any 12 month period and crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over at least 50% of the lot or facility.

**Agricultural Liaison** - Individual in IDEM that serves as a liaison to citizens and the regulated community to provide guidance on permit requirements, performance standards and policy issues.

**Air Pollution Control Board** - This Indiana citizen Board is the entity responsible for the promulgation of rules for various air pollution control matters, including implementation in Indiana of the Federal Clean Air Act. The Board is made up of twelve voting members, four ex-officio from other agencies and eight appointed by the Governor based on recommendations from representative constituencies.

**Apiary** - Colonies, hives, and other equipment assembled in one location for beekeeping operations.

**BOAH** - Board of Animal Health - The agency is responsible for disease prevention and eradication in livestock, protecting the public health from the spread of animal diseases and providing safe food through state meat, poultry and dairy inspections. The State Veterinarian, who is appointed by the Governor from candidates selected by an eleven-member oversight Board, is the head of the agency. BOAH is headquartered in Indianapolis and has approximately 125 staff members.

**CAFO** - Concentrated Animal Feeding Operation - An animal feeding operation that is regulated under the federal Clean Water Act through the National Pollutant Discharge Elimination System (NPDES) program. The federal rules are administered by IDEM.

**Cervid** - An animal such as deer and elk. The policy issue in this report is the regulation of captive, privately owned deer or elk as compared to wild herds on private land.

**CFO** - Confined Feeding Operation - An animal feeding operation that houses at least 300 cattle, 600 swine or sheep, or 30,000 fowl. It is a program authorized by the Indiana General Assembly and is administered by IDEM.



**CLD** - Creamery License Division - The Creamery License Division of Purdue University is governed by an eight member Creamery Examining Board. The role of the CLD is to ensure fairness and accuracy in the weighing, sampling, and testing of milk and cream purchased in Indiana through the implementation of inspection and educational programs. It has one staff person.

**Clean Water Act**-The Federal law which utilizes both regulatory and non-regulatory tools to achieve the goal of restoration and maintenance of the chemical, physical and biological integrity of the Nation's waters.

**County Surveyors** – In Indiana, the county surveyors, who are elected, are responsible for technical issues related to 1) regulated drain maintenance and construction and 2) obstructions of private and mutual drains. The county surveyor works with the Drainage Board.

**DNR** - Indiana Department of Natural Resources - DNR is an agency of over 1500 employees headquartered in Indianapolis whose responsibility is to protect, enhance, preserve, and wisely use natural, cultural, and recreational resources for the benefit of Indiana's citizens. Several divisions are responsible for regulating activities related to agriculture, including the Division of Water, Division of Entomology and Plant Pathology, and Division of Fish and Wildlife. The Director is appointed by the Governor.

**Drainage Board** – The County Drainage Board is the body granted authority in each county to oversee construction and maintenance of regulated drains and to resolve disputes related to obstruction of private and mutual drains. The Drainage Board may be the county executive board or a separately appointed board.

**EPA** - Environmental Protection Agency - The federal agency charged with environmental protection.

**GBWLA** - Grain Buyers and Warehouse Licensing Agency - The GBWLA is charged with licensing and auditing of grain buyers and warehouses to reduce risks to grain producers. As part of the Indiana State Department of Agriculture, the Director of the GBWLA is appointed by the Director of ISDA. It has a staff of eight.

**Grain Moisture Meter Program** - The purpose of this program is to annually inspect and test all equipment used to test the moisture and the foreign material content and dockage of grain purchased, sold or exchanged in Indiana. This program is administered by the Grain Buyers and Warehouse Licensing Agency under the authority of the Director of the Indiana State Department of Agriculture. It utilizes the staff of the GBWLA.

**IDEM** - Indiana Department of Environmental Management - IDEM is responsible for implementation of programs designed to protect the environment. IDEM's regulatory authority includes permitting, inspection and compliance monitoring, and enforcement activities. IDEM is the agency responsible for implementation of regulations for animal

feeding operations, which includes review of applications for construction of new and expanding facilities, as well as their operation. The Commissioner is appointed by the Governor. It has a staff of approximately 1000 and is headquartered in Indianapolis with satellite offices around the State.

**IGIC** - Indiana Grain Indemnity Corporation - The Indiana Grain Indemnity Corporation was created by the General Assembly to protect sellers of grain in the event of financial failure of a grain buyer. The Indiana Grain Indemnity Fund balance was secured through a premium charged to grain producers at the time grain was sold. The Director of the Grain Buyers and Warehouse Licensing Agency serves as chairperson of the corporation Board.

**Indiana Crop Improvement Association** - A non-profit, self-supporting agency, ICIA is responsible for various seed programs including seed certification, laboratory testing and other quality assurance programs. It is located in Lafayette.

**Indiana Department of Homeland Security** – IDHS is the State agency reporting to the Governor responsible for the prevention, protection against, responding to and recovering from man-made or natural threats and events to people, property and the economy.

**Indiana Port Commission** - The Ports of Indiana is a quasi-governmental organization that operates a statewide system of ports, foreign trade zones and economic development programs under the authority of the Indiana Port Commission, a seven-member bipartisan board appointed by the Governor. It has a staff of twenty seven and is located in Indianapolis.

**IOSHA** - Indiana Occupational Safety and Health Administration - IOSHA is responsible for ensuring Hoosier workplace safety and health.

**ISDA** - Indiana State Department of Agriculture - ISDA is the agency with primary responsibility for the promotion and growth of agriculture in Indiana. The Director is appointed by the Governor and is responsible to the Secretary of Agriculture and Rural Development. The Division of Soil Conservation administers conservation grants. ISDA has a staff of approximately seventy and is located in Indianapolis.

**ISDH** - Indiana State Department of Health - The Indiana State Department of Health is responsible for promoting, protecting and providing for the health of Hoosiers in their communities. Several programs under the authority of ISDH have a direct impact on agriculture, including the Weights and Measures Program, food inspection programs and residential septic system program. The Commissioner is appointed by the Governor. It has a staff of approximately 900 employees and is headquartered in Indianapolis.

**ISEB** - Indiana State Egg Board - ISEB formulates and determines standards of quality and weights of eggs sold or offered for sale as fresh eggs. ISEB is governed by a nine member Board appointed by the Governor based on recommendations from

representative constituencies. ISEB is administered by Purdue University. It has a staff of five and is headquartered in West Lafayette.

**Legislative Service Agency** - The Indiana Legislative Services Agency (LSA) is the bipartisan service and administrative agency for the Indiana General Assembly. It provides bill drafting, research, code revision, fiscal, budgetary, and management analysis, information, administrative, and other services to legislators.

**Lieutenant Governor** - The second highest state executive who is elected by the citizens. The Lt. Governor serves as the Secretary of Agriculture and Rural Development for the State.

**NPDES** - National Pollutant Discharge Elimination System - The federal EPA permit program that controls water pollution by regulating point sources that discharge pollutants into waters of the United States.

**OISC** - Office of Indiana State Chemist & Seed Commissioner - OISC, through the Fertilizer Section and Pesticide Section, is responsible for regulations related to the storage, handling, and use of fertilizer materials and pesticides, as well as for ensuring proper labeling of fertilizer and pesticide products. The Seed Section of OISC maintains programs to ensure seed quality and proper labeling of seed containers offered for sale. The Feed Section is responsible for ensuring a safe supply of animal feed that is free of adulterants or harmful contaminants and that is properly labeled. The Director of OISC is the State Chemist. OISC is administered by Purdue University. It has a staff of approximately seventy and is headquartered in West Lafayette.

**OPPTA** - Office of Pollution Prevention and Technical Assistance- OPPTA is the office in IDEM that provides advice and technical assistance to the regulated community under condition of confidentiality.

**Purdue University** - Land grant university which houses the Cooperative Extension Service and several other offices and boards with regulatory authority over agriculture.

**Secretary of Agriculture and Rural Development** - The Lieutenant Governor by virtue of office.

**Section 401 Water Quality Certifications** - A certification by IDEM required for federal 404 permits in Indiana. Federal 404 permits are given for filling federal jurisdictional waters such as wetlands and stream banks.

**Soil and Water Conservation Districts** – Soil and Water Conservation Districts exist in every county in Indiana to provide information about soil, water and related natural resource conservation; identify and prioritize local soil and water resource concerns; and connect land users to sources of educational, technical and financial assistance to implement conservation practices and technologies.

**Solid Waste Management Board** - The Board is the entity responsible for promulgation of rules for the regulation of solid and hazardous waste and atomic radiation. The Board is made up of fourteen voting members, four ex-officio from other state agencies and ten appointed by the Governor based on recommendations from representative constituencies.

**State Chemist** - The State Chemist and Seed Commissioner- The State Chemist is the head of the Office of the Indiana State Chemist and Seed Commissioner. The State Chemist is appointed by the Governor.

**TMDL** - Total Maximum Daily Load - The TMDL program is the initiative by EPA and IDEM under the federal Clean Water Act to address the nonpoint sources of pollution that cause a particular body of water not to meet the standard for a particular pollutant. The TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

**Water Pollution Control Board** - This Indiana citizen Board is the entity responsible for promulgation of rules for the control and prevention of pollution of waters in Indiana, including implementation of the federal Clean Water Act and the federal Safe Drinking Water Act. The Board is made up of twelve voting members, four ex-officio from other state agencies and eight appointed by the Governor based on recommendations from representative constituencies.